UNITED STATES
v.
MINE DEVELOPMENT CORP., ET AL.

IBLA 76-560 Decided October 18, 1976

Appeal from decision of Administrative Law Judge Robert W. Mesch declaring mining claims null and void in contest A-5947.

Affirmed.

1. Administrative Procedure: Generally -- Contests and Protests: Generally -- Hearings -- Mining Claims: Contests -- Notice: Generally -- Notice: Constructive Notice -- Rules of Practice: Generally -- Rules of Practice: Government Contests

   Where an attorney files an answer to a contest concerning mining claims on behalf of certain individuals, who, during the pendency of the contest proceedings, transfer their interests in the mining claims to a corporation of which they are major stockholders and Directors, and the attorney represents those individuals and the corporation at the contest hearing, the corporation is bound by the determination reached therein, even though the corporation may not have received actual notice of the contest.

2. Administrative Procedure: Generally -- Attorneys -- Contests and Protests: Generally -- Hearings -- Notice: Generally -- Notice: Constructive Notice -- Rules of Practice: Generally

   Service of a document upon a person's attorney of record constitutes effective service upon such person.

3. Administrative Procedure: Hearings -- Contests and Protests: Generally -- Hearings -- Mining Claims: Contests -- Rules of Practice: Government Contests -- Rules of Practice: Hearings

A request for postponement made more than 10 days prior to a hearing is properly denied where there has been no showing of good cause and proper diligence. A contestee's request for postponement is properly denied when (1) a contestee only seeks postponement in order to pursue an exchange of land for the claims; and (2) the Administrative Law Judge rules that the contestant may seek to dismiss the contest if an exchange is contemplated and the contestant does not wish to abate the contest proceedings.

4. Administrative Procedure: Hearings -- Contests and Protests: Generally -- Hearings -- Mining Claims: Contests -- Rules of Practice: Government Contests -- Rules of Practice: Hearings

A request for postponement made at a hearing or within 10 days of a hearing is properly denied where there has been no showing of an extreme emergency which could not have been anticipated and which justifies beyond question the granting of a postponement. This standard is not met by a party's assertion that it has not had adequate opportunity to prepare a defense where such difficulty could have been anticipated before the request was made.

5. Contests and Protests: Generally -- Hearings -- Mining Claims Contests -- Mining Claims: Determination of Validity

Where a mineral examiner testifies on the basis of his examination of mining claims that the mineral values on the claims are insufficient to support a finding of discovery, a prima facie case against the validity of the claims

has been established, and where the contestees walked out of the hearing and did not submit evidence to rebut the prima facie case, the claims must be declared invalid.

6. Administrative Authority: Generally -- Mining Claims: Contests -- Mining Claims: Determination of Validity -- Secretary of the Interior

The Secretary of the Interior has the authority to determine the validity of mining claims upon adequate notice and opportunity for hearing.

APPEARANCES: John F. Munger, Esq., Verity, Smith, Lacy, Allen & Kearns, P.C., Tucson, Arizona, for appellants; Thomas A. Pedron, Esq., Office of the General Counsel, U.S. Department of Agriculture, Albuquerque, New Mexico, for appellee.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

This is an appeal from the March 17, 1976, decision of Administrative Law Judge Robert W. Mesch declaring appellants' mining claims null and void. 1/ At the behest of the Forest Service, U.S. Department of Agriculture, an initial complaint was filed against the claims on April 27, 1971, and an amended complaint on August 17, 1972. Contestant, after diligent search, was unable to find certain contestees of record, and after notice by publication, with no response, their interests were declared null and void by decision dated May 1, 1974. On November 17, 1975, the remaining contestees were issued a notice of hearing to be held on February 6, 1976.

1/ This decision involves the following claims situated in parts of Secs. 21, 22, 23, 25, 26, 27, and 28, T. 20 S., R. 14 E., GSR Mer. (within the Tyndall Mining District, Coronado National Forest), Santa Cruz County, Arizona:

Tia Juana N Extension No. 1,
Tia Juana N Extension No. 2,
Tia Juana N Extension No. 3,
Tia Juana S Extension No. 1,
Tia Juana S Extension No. 2,
Tia Juana S Extension No. 3,
Tia Juana W Extension No. 1,
Tia Juana E Extension No. 1,
Tia Juana NW Extension No. A,
Beestand Nos. 1, 2, and 3, and
Iron Springs Lode Mining Claims.

On January 24, 1976, appellants submitted a request for postponement which Judge Mesch denied, based on his finding that contestees had not shown good cause or proper diligence. At the beginning of the hearing, appellants again moved for postponement. Upon denial of the motion, counsel for appellants walked out of the hearing which continued in their absence.

The contestees of record at the time the notice of hearing was issued included Floyd R. Bekins, Sr., Floyd R. Bekins, Jr., and Mine Development Corporation, who are joined in this appeal by Bekins Mineral Resources, Inc. (BMRI). By agreement dated January 1, 1975, Floyd R. Bekins, Sr., and Dorothy Bekins conveyed their interest in the subject claims, inter alia, to BMRI. Floyd R. Bekins, Jr., signed the agreement to purchase the claims as BMRI's President, and although he had actual notice of the contest pending against the claims he was purchasing on behalf of the corporation, he failed to notify the Arizona State Office of the Bureau of Land Management (BLM) and the Office of Hearings and Appeals (OHA) of the transfer of the claims.

[1] Appellants contend that BMRI was entitled to notice of the hearing. BMRI is a successor to the interests of other contestees. We note that the attorney Leo N. Smith, Esq., of Verity & Smith filed a response to the original complaint on September 19, 1972, and also represents the contestees in the present proceeding. However, the record shows that Floyd R. Bekins, Sr., and Floyd R. Bekins, Jr., are Directors of BMRI and major stockholders therein. They conveyed the mining claims in issue to BMRI.

In Wellington Oil Co. of Delaware v. Maffi, 150 S.W.2d 60, 63 (Sup. Ct. of Texas 1941), the court stated:

> * * * The rule recognized in most jurisdictions appears to be that announced in Section 276 of the American Law Institute's Restatement of the law of Agency, as follows: "(a) Relevant knowledge may have been acquired by the agent before the time of his employment or after he becomes agent, either while acting for himself or for the principal. In any case except where the knowledge is acquired confidentially (see sec. 281), the important matter is not how the agent acquired it, but whether or not he has the knowledge at the time when it becomes relevant in his work for the principal. If he has the information in mind, the principal is bound, under the rule stated in this Section, equally where it was not acquired because he was acting as an agent, as where he obtained it as such agent. * * *"
>
> The same principle is announced, in substance, in 19 C.J.S., Corporations, §§ 1082 and 1083; 2 Am.

Jur., Agency, secs. 375 and 376; 13 Amer. Jur., Corporations, sec. 1111.

The situation here is somewhat analogous to that presented in W. H. Bird, 72 I.D. 287, 295 (1965). In Bird, the Department stated:

> * * * In a case which turned on whether one bank was a bona fide purchaser of a usurious note exacted [sic] by another bank where the two banks had two officers who were directors and members of the executive committees of both banks and who knew of the usury but the remaining members of the executive committee and the board of directors of the purchasing bank did not, it was said:
>
> > The District Court found as a conclusion of law that the Savings Bank purchased the note without notice. We cannot agree with that conclusion. The knowledge of Baden and Donaldson must be imputed to the bank under the rule that "notice to the agent is notice to the principal not only as to knowledge acquired by the agent in the particular transaction, but to knowledge acquired by him in a prior transaction, and still in his mind at the time of his acting as such agent, if the agent is at liberty to communicate such knowledge to the principal (Distilled Spirits [Harrington v. United States] 11 Wall. 356, 20 L. Ed. 167)." * * *
>
> * * * * * * *
>
> The real reason for the rule which charges a principal with his agent's knowledge is simply the injustice of allowing the principal to avoid, by acting vicariously, burdens to which he would become subject if he were acting for himself. The so-called presumption that the principal knows what the agent knows is irrebuttable; it cannot be avoided by showing that the agent did not in fact communicate his knowledge. It should follow that it cannot be avoided by showing that the agent had such an adverse interest that he would not be likely to communicate his knowledge. In general, "Notice should be imputed wherever there is agency or ratification." * * * Certainly where, as in this case, it does not appear that the agent acted unfairly toward his principal, or even that he would have derived any advantage from doing so, the principal should be charged with the agent's knowledge.

> Where an agent common to two parties betrays one in favor of the other the second, of course, cannot charge the first with the agent's knowledge. Herdan v. Hanson, 182 Cal. 538, 189 P. 440. The present case differs from such cases not only in that here no one was betrayed, but also in that appellants never employed the Bank's agents, Baden and Donaldson, and are in no way responsible for their acts. The Supreme Court has held that if a company's agents withhold knowledge from it, even fraudulently, that fact "cannot alter the legal effect of their acts or of their knowledge with respect to the company in regard to third parties who had no connection whatever with them in relation to the perpetration of the fraud, and no knowledge that any such fraud had been perpetrated. * * * In such case the rule imputing knowledge to the company by reason of the knowledge of its agent remains." Bowen v. Mount Vernon Savings Bank, 105 F. 2d 796, 798, 799 (D.C. Cir. 1939). 6/

6/ Accord: Restatement of Agency (2d) §§ 272-283.

Accordingly, our decision today constitutes the Department's final decision with respect to BMRI's interest as well as the interests of the other appellants in the claims at issue.

[2] Appellants contend that they have been denied due process of law, asserting that they had no opportunity to prepare for the hearing because they did not have actual notice of the hearing until they had received copies of the notice from their attorney sometime in January. Appellants' excuses for the delay, i.e., appellants had moved and not furnished their attorney with the new address and mail was often not forwarded -- are irrelevant as service of the notice on appellants was effected by its delivery to appellants' counsel of record. See 43 CFR 4.22(b). 2/

2/ Appellants contend that the fact that they did not receive actual notice until sometime in January deprived them of their due process right to a hearing in that they did not have adequate time to prepare their case. As authority for this proposition, they cite Poe v. Charlotte Memorial Hospital, Inc., 374 F. Supp. 1302 (W.D.N.C. 1974), wherein the court held that a hospital receiving federal funds did not afford a doctor due process when it denied him staff privileges without advance notice and an opportunity for a hearing. Appellants particularly stress that portion of the court's opinion where it holds that the opportunity to defend must be given at a time when it can be effective. However, in contrast to the secret and summary procedures found unacceptable

[3] The principal issue is whether the Administrative Law Judge's denial of the appellants' request for postponement constituted an abuse of discretion. The standards for deciding requests for postponement of contest hearings are set forth by 43 CFR 4.452-3:

> (a) Postponements of hearings will not be allowed upon the request of any party or the Bureau except upon a showing of good cause and proper diligence. A request for a postponement must be served upon all parties to the proceeding and filed in the office of the Administrative Law Judge at least 10 days prior to the date of the hearing. In no case will a request for postponement served or filed less than 10 days in advance of the hearing or made at the hearing be granted unless the party requesting it demonstrates that an extreme emergency occurred which could not have been anticipated and which justifies beyond question the granting of a postponement. In any such emergency, if time does not permit the filing of such request prior to the hearing, it may be made orally at the hearing.

* * * * * * *

As appellants' first request for postponement was filed more than 10 days prior to the hearing, it could have been granted had they shown "good cause and proper diligence." However, the only reason given at that time for postponement was the possibility of an exchange of other land for appellants' claims. 3/ Judge Mesch properly ruled that good cause and proper diligence had not been shown and denied the request. He alternatively ruled that the Forest Service could seek to dismiss the contest proceedings pending the outcome of any proposed land exchange, but the Forest Service desired to proceed with the hearing.

[4] It was not until the commencement of the hearing that appellants contended that they had insufficient time to prepare a case and raised the issue of inadequacy of notice as a basis for postponement. Because that request was made less than

---

fn. 2 (continued)
in Poe, the contestees in the instant case were apprised of the charges against the claims by the original complaint issued in 1971 and were thus afforded an ample opportunity to develop a meaningful defense.
3/ The proposed exchange apparently involved appellants' three patented claims rather than the unpatented claims involved in this contest.

10 days before the hearing, Judge Mesch had no authority to grant the request unless the contestees demonstrated that "an extreme emergency occurred which could not have been anticipated and which justifies beyond question the granting of a postponement." 43 CFR 4.452-3(a). Even if lack of an opportunity to prepare for a hearing could be legitimately invoked to justify a postponement of the hearing in a contest that had been pending for several years, such a difficulty certainly could have been anticipated at sometime prior to the commencement of the hearing. It appears that counsel for appellants should have been aware of the need for his clients' readiness at some point prior to 10 days before the hearing as he had received the undelivered copies of the notice he mailed to his clients sometime in early January. Because the record shows no occurrence of an extreme emergency which could not have been anticipated, Judge Mesch was without authority to postpone the hearing and properly denied appellants' request.

[5] At the hearing, the Forest Service's mineral examiner testified that he had examined and sampled the claims, and offered the opinion that a reasonable man would not spend any more time and money on the claims with any hope of success (Tr. 40). The Forest Service had thus established a prima facie case which was not overcome by any evidence submitted by appellants. Chrisman v. Miller, 197 U.S. 313 (1905). On the basis of that record, Judge Mesch properly declared the claims invalid. United States v. Taylor, 19 IBLA 9, 82 I.D. 68 (1975); Foster v. Seaton, 271 F.2d 836 (D.C. Cir. 1959).

[6] Lastly, appellants contend that the Secretary of the Interior lacks authority to hear and adjudicate this contest. In answer to this assertion, we need only recite the words of the Supreme Court in Cameron v. United States, 252 U.S. 450, 459-60 (1920):

> By general statutory provisions the execution of the laws regulating the acquisition of rights in the public lands and the general care of these lands is confided to the land department, as a special tribunal; and the Secretary of the Interior, as the head of the department, is charged with seeing that this authority is rightly exercised to the end that valid claims may be recognized, invalid ones eliminated, and the rights of the public preserved.

The hearing procedure used by the Department for mining claim contests conforms to the Administrative Procedure Act, 5 U.S.C. § 551 et seq., as amended (1970). United States v. O'Leary, 66 I.D. 17 (1959). See Adams v. United States, 318 F.2d 861 (9th Cir. 1963).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

_____
Frederick Fishman
Administrative Judge

We concur:

_____
Martin Ritvo
Administrative Judge

_____
Joan B. Thompson
Administrative Judge